APPEAL NO. 041522
FILED JULY 30, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on June 8, 2004. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 12th quarter. The appellant (carrier) appeals, asserting that the claimant failed to satisfy his burden of proof. The claimant urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant is entitled to 12th quarter SIBs. Section 408.142 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) establish the requirements for entitlement to SIBs. At issue was whether the claimant's unemployment was a direct result of the impairment from the compensable injury and whether he was enrolled in, and satisfactorily participated in a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC) during the qualifying period. The carrier essentially argues that the claimant has failed to establish direct result because he is employable, and because he voluntarily left the workforce to obtain retraining. The carrier cites to several Appeals Panel decisions to support its position in this regard. The carrier also asserts that the hearing officer failed to make any findings of fact or conclusions of law regarding direct result. Rule 130.102(c) provides that direct result can be shown if an injured employee has earned less than 80% of the employee's average weekly wage (AWW) as a direct result of the impairment from the compensable injury if the impairment from the compensable injury is a cause of the reduced earnings. There was evidence that the claimant was under work restrictions during the relevant qualifying period. Based upon this, and other evidence presented by the claimant, the hearing officer could conclude that the claimant earned less than 80% of his AWW and that the impairment from his compensable injury was a cause of the reduced earnings during the relevant qualifying period. We additionally note that in Finding of Fact No. 4, the hearing officer did find direct result.

Whether or not the claimant established direct result and satisfactory participation in a full-time vocational rehabilitation program sponsored by the TRC during the qualifying period presented questions of fact for the hearing officer to resolve. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). In view of the applicable law and the evidence presented, we cannot conclude that the hearing officer's determinations are so against

the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TRUCK INSURANCE EXCHANGE** and the name and address of its registered agent for service of process is

FRED B. WERKENTHIN
100 CONGRESS AVENUE
AUSTIN, TEXAS 78701.

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Daniel R. Barry
Appeals Judge

CONCUR:

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Chris Cowan
Appeals Judge

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Robert W. Potts
Appeals Judge